

PROPOSED ADU PROGRAM RIDER TO RESIDENTIAL CONTRACT OF SALE
IN CASES WHERE THE ADU COVENANTS WERE RECORDED
PRIOR TO JULY 2, 2002

In practice, exhibits with the Rider typically would include:

Copy of Recorded Covenants
Copy of Purchaser and Seller Certification
Statement of the ADU Provisions

Affordable Dwelling Unit (ADU) Program Rider to Residential Contract of Sale

This Rider is made on _____, 20____ to that certain Sales contract ("Contract") dated _____, 20____ between _____ ("Purchaser") and _____ ("Seller") for the purchase and sale of the property ("Property") having an address of _____, Virginia, _____ and being more particularly described in the Contract.

Purchaser and Seller mutually agree, any other provisions of the Contract to the contrary notwithstanding, that the following provisions are hereby incorporated into the Contract:

1. **Purchase Price.** The purchase price (the "Purchase Price") of the Property is \$ _____. The Purchase Price has been established in accordance with the provisions of the Fairfax County Affordable Dwelling Unit Program as set forth in Part 8, Article 2 of the Fairfax County Zoning Ordinance, and regulations established with respect thereto, as the same may be amended from time to time (such ordinance provisions and regulations are collectively referred to as the "Ordinance.").
2. **Notice of Principal Residence.** Purchaser hereby acknowledges and agrees that Purchaser will occupy the Property as Purchaser's principal residence in accordance with the provisions of the Ordinance.
3. **Compliance with Affordable Dwelling Unit Ordinance.** It is agreed and understood that the Property is subject to the terms and conditions of the Ordinance, including, without limitation, price controls, occupancy requirements and financing and sales restrictions applicable to the Property. Pursuant to the Fairfax County Affordable Dwelling Unit Program, the Property is subject to a Declaration of Affordable Dwelling Units Covenants recorded in Deed Book ___, Page ___ (the "General ADU Unit Covenants") [*to be included if applicable for additional ADU covenants recorded with respect to the individual unit property*) and the Declaration of Affordable Dwelling Unit Covenants recorded among the land records of Fairfax County, Virginia in Deed Book _____ at page _____ (the "Individual ADU Unit Covenants")] (collectively, the "Recorded Covenants"), a copy of which Recorded Covenants is attached hereto as Exhibit A. In addition, it is acknowledged and understood by Purchaser and Seller that the Recorded Covenants state that the Property is subject to all the provisions of the Ordinance, as amended from time to time, and that the Ordinance has been amended altering the terms and conditions of the Ordinance that apply to the Property, even if such altered terms and conditions are not expressly stated in the Recorded Covenants. In confirmation of the foregoing, in connection with the execution of the Contract, Seller and Purchaser shall execute the Purchaser and Seller Certification in the form as set forth on Exhibit B, attached hereto and cause it to be delivered in fully executed form to the ADU Program Coordinator at

the Fairfax County Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030 within three (3) business days after ratification of the Contract..

4. **Deed Provisions Required to be Included in Deed to Purchaser from Seller.**

Purchaser and Seller acknowledge and agree that each of them has read and understood the following deed provision text and its related Exhibit of the Statement of ADU Covenant Provisions both of which are to be included in the deed conveying the Property to Purchaser and to which the Property will then be subject. Purchaser and Seller agree that the following text and the related Exhibit of the Statement of ADU Covenant Provisions shall be included in the deed conveying the Property to Purchaser from Seller pursuant to this Contract:

The property hereby conveyed is expressly subject to the Declaration of Affordable Dwelling Unit Covenants recorded among the land records of Fairfax County, Virginia in Deed Book _____ at page _____ (the "General ADU Covenants") [*(to be included if applicable for additional ADU covenants recorded with respect to the individual unit property)* and the Declaration of Affordable Dwelling Unit Covenants recorded among the land records of Fairfax County, Virginia in Deed Book _____ at page _____ (the "Individual ADU Unit Covenants")] (collectively referred to herein as the "ADU Covenants") pursuant to the Affordable Dwelling Unit Program as set forth in Part 8 of Article 2 of the Fairfax County Zoning Ordinance and the regulations established with respect thereto, as the same may be amended from time to time (collectively such ordinance and regulations, as amended from time to time, are referred to herein as the "Ordinance").

THE ADU COVENANTS, AMONG OTHER THINGS, INCLUDE RESTRICTIONS ON FUTURE TRANSFERS AND PROVIDE THAT DURING THE CONTROL PERIODS (AS DEFINED THEREIN) THE PROPERTY HEREBY CONVEYED SHALL BE SUBJECT TO ALL THE PROVISIONS OF THE ORDINANCE, AS THE SAME MAY BE AMENDED FROM TIME TO TIME.

Effective July 2, 2002, Part 8, Article 2 of the Fairfax County Zoning Ordinance was amended including certain changes affecting the terms of the ADU Covenants provisions applicable to the property hereby conveyed.

Section 2-812(10) of the Zoning Ordinance, as amended effective July 2, 2002, specifically provides that the provisions

of Sections 2-812(2)(F) and 2-812(8)(B) of the Zoning Ordinance, as amended effective July 2, 2002, shall apply, and the applicable covenants shall be deemed to incorporate such provisions, whether or not expressly set forth in such covenants, to any individual affordable dwelling unit initially conveyed on or after July 2, 2002, and the resale of any affordable dwelling unit conveyed on or after July 2, 2002, regardless of whether the covenants applicable to any such initial conveyance or resale conveyance were recorded prior to July 2, 2002.

AS PROVIDED BY SECTIONS 2-812(10), 2-812(2)(F), AND 2-812(8)(B) OF THE ORDINANCE, AMONG OTHER THINGS, THE TOTAL AGGREGATE AMOUNT OF INDEBTEDNESS THAT MAY BE SECURED BY THE PROPERTY HEREBY CONVEYED SHALL NOT EXCEED THE PURCHASE PRICE FOR THE PROPERTY HEREBY CONVEYED, AS ADJUSTED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 2-812(4) OF THE ORDINANCE, AND OTHER TERMS AND CONDITIONS APPLY, INCLUDING, BUT NOT LIMITED TO, A RIGHT OF THE FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY OR A NONPROFIT AGENCY DESIGNATED BY THE COUNTY EXECUTIVE OF FAIRFAX COUNTY, VIRGINIA TO ACQUIRE THE PROPERTY HEREBY CONVEYED ON CERTAIN TERMS IN THE EVENT OF A PENDING FORECLOSURE SALE OF SUCH PROPERTY.

A copy of a Statement of ADU Covenant Provisions (the "ADU Statement") is attached hereto as Exhibit _____ and is incorporated herein by this reference. The ADU Statement restates the provisions of the Individual ADU Unit Covenants that apply to the property hereby conveyed and includes the statement of applicable provisions set forth in Sections 2-812(2)(F) and 2-812(8)(B) of the Fairfax County Zoning Ordinance (Zoning Ordinance), effective July 2, 2002, as provided for by Section 2-812(10) of the Zoning Ordinance that are deemed incorporated into the ADU Covenants upon the conveyance of the property by this deed.

A copy of the Statement of ADU Covenant Provisions (the "ADU Statement") referred to in the above deed provision text is included in this Contract as Exhibit C attached hereto.

5. **Purchaser to Advise Lenders of ADU Program Requirements.** Purchaser shall provide each lender to which Purchaser applies for financing of the purchase of the Property a complete copy of the Contract including this ADU Program

Rider and advise each lender that the ADU Statement includes requirements with which any financing documents provided must comply.

6. **No Liability of ADU Program (as defined in this paragraph).** The Purchaser and Seller each expressly acknowledge and agree that the Board of Supervisors of Fairfax County, the Fairfax County Redevelopment and Housing Authority and the Fairfax County Department of Housing and Community Development and all of the employees, agents, contractors, representatives and counsel of each of them (collectively and each individually referred to in this paragraph 6 as the “ADU Program”) shall have no liability to either party and are hereby unconditionally and forever released from any and all liability whatever in connection with the purchase and sale of the Property. Purchaser and Seller expressly acknowledge that each of them intends the ADU Program to be the beneficiary of such release.

Witness our signatures and seals:

SELLER:

Date Signature

Date Signature

PURCHASER:

Date Signature

Date Signature

EXHIBIT A to ADU Program Rider to Residential Contract of Sale

Recorded ADU Covenants



FAIRFAX COUNTY
AFFORDABLE DWELLING UNIT PROGRAM
PURCHASER AND SELLER CERTIFICATION FORM

Department of Housing and Community Development, 3700 Pender Drive, Suite 100, Fairfax, VA 22030-7442

Instructions: **Purchaser(s) must complete Block 1, read Block 4 and affix their signatures(s).**
 Builder/Developer (Seller) must complete Blocks 2, 3 and affix their signature in Block 5.

1. PURCHASER

Name _____

Present Address _____

2. SELLER/DEVELOPER

Name _____

Present Address _____

3. AFFORDABLE DWELLING UNIT ADDRESS

Number Street City State Zip

Name of Subdivision

Lot#

Date of Purchase

Sales Price

4. Special provisions (affecting the home referenced in block 3) are included when a home is purchased through the First-Time Homebuyers Program also known as the Affordable Dwelling Unit Program). I/We understand that for Affordable Dwelling Units sold (new units or resales) on or after July 2, 2002, the Declaration of Affordable Dwelling Unit (ADU) Covenants recorded in the land records for the home identified above and the new provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance, as amended requires the following, among other things:

- a. If I offer the home for sale, it must first be offered exclusively to First-Time Homebuyers Program applicants for sixty (60) days.
- b. The home may be resold anytime during the control period. For ADU's first sold after March 31, 1998, the control period is for fifteen (15) years from the date of initial sale.

ADU's first sold earlier initially had a fifty (50) year control period, which at the election of the current owner may have been reduced to the fifteen (15) year control period and if desired can still be reduced to the fifteen (15) year period at any time by recordation of proper amendments to the ADU covenants. Upon recordation of such ADU amendments, the (15) year period will be deemed to have commenced on March 31, 1998. The FCRHA has first right of refusal after 15 years for units purchased after July 2, 2002. The amount of the sales price cannot exceed the original purchase price, plus annual increases in the Consumer Price Index (CPI) during the period the home is owned. However, sales prices may be adjusted for certain types of improvements made to the home by the owner, such as finishing a basement or adding a deck or bathroom. (I/We will consult the Department of Housing and Community Development for details.) At the initial sale that occurs after the control period the unit shall first be offered exclusively to the FCRHA for a period of sixty days. The unit can then be sold for market price; however at closing, the excess amount realized through the sale over the applicable adjusted home price is evenly divided between the owner (seller) and the Fairfax County Housing Trust Fund.

- c. The home must be occupied by the purchaser(s) as their primary residence. The home cannot be rented. Each year I/We must sign, have notarized, and deliver to the Fairfax County Redevelopment and Housing Authority (FCRHA) a Certification of Occupancy.
- d. The home is subject to the provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance, as amended from time to time. Those provisions were amended effective July 2, 2002. The new provisions affecting the ADU Covenants shall apply to units initially sold and resales of existing units after July 2, 2002, and the applicable covenants shall be deemed to incorporate such provisions, whether or not expressly set forth in the recorded covenants. New provisions include, but are not limited to, the following:

New Provision: One Covenant. A Declaration of ADU Covenants will be recorded with the subdivision plat or condominium declaration for new developments that file on or after July 2, 2002. There will no longer be an individual unit Declaration of ADU Covenants recorded at the time of an individual new unit sale or resale of an existing ADU unit. The deed to the unit will refer to the applicable Declaration of ADU Covenants and provisions as amended by the Fairfax County Zoning Ordinance.

New Provision: Limits on Secured Financing. The amount of indebtedness that I/ We may secure by an interest in the ADU is limited only to that ADU's control price, as provided for by the ADU Program and established by the Fairfax County Department of Housing and Community Development. Any indebtedness beyond the control price is not secured by any interest in the ADU.

New Provision: Times for Notice of Default, Right to Cure, and Notice of Foreclosure, and the Addition of Right to Acquire. The lender must give a notice of default to the County Executive and the Fairfax County Redevelopment and Housing Authority (FCRHA) and notice of pending foreclosure. The FCRHA has 90 days to cure the default (Right to Cure) and/or 90 days to exercise the right to acquire (Right to

Acquire) the unit upon which foreclosure is pending. These notices can run simultaneously. The acquisition of the ADU by the FCRHA can be prior to or at the foreclosure sale. The FCRHA's Right to Acquire the ADU is for a price not to exceed the control price and reasonable and customary costs and expenses (Outstanding First Trust Debt). If the FCRHA elects not to exercise its Right to Acquire, a non-profit organization designated by the County Executive may elect to acquire the ADU being foreclosed upon for a price not to exceed Outstanding First Trust Debt.

New Provision: Eligible Lender. Only a foreclosure by an Eligible Lender, as defined below, after it has given the Right to Cure and the Right to Acquire noted above will cause the ADU covenants to be released. An Eligible Lender is an institutional lender holding a first priority purchase money deed of trust on an individual ADU or a refinancing of an institutionally financed purchase money deed of trust by an institutional lender provided that such refinancing does not exceed the outstanding principal balance of the existing purchase money first trust indebtedness on the unit at the time of refinancing.

New Provision: Division of Foreclosure Proceeds. If the ADU in foreclosure proceedings is not acquired by the FCRHA, or by the County Executive's designated non-profit organization, and is sold at foreclosure, then one-half (1/2) of the sales proceeds over the amount of the Outstanding First Trust Debt is required to be paid to the Fairfax County Housing Trust Fund.

I/We the undersigned as the Purchaser(s) of the Affordable Dwelling Unit (ADU) identified above acknowledge receipt of a copy of the recorded Declaration of Affordable Dwelling Unit Covenants for the home and a copy of the required deed provisions applicable to the home upon its conveyance to me/us provided for by the Affordable Dwelling Unit Program, as amended effective July 2, 2002. I/We acknowledge that we have read and understand these documents.

Purchaser's Signature

Date

Co-Purchaser's Signature

Date

Social Security No. _____

Social Security No. _____

5. I/We the undersigned as the Seller(s) of the Affordable Dwelling Unit referenced above certify that to the best of our knowledge purchasers meet the qualifications as first-time homebuyers and are income eligible to purchase the ADU. We further certify that the sales price in block 3 is the sales price approved under the program guidelines.

Seller/ Owner Signature

Date

Co-Owner Signature

Date

INSTRUCTIONS

This Statement of Affordable Dwelling Unit Covenant Provisions (ADU Statement) states the Affordable Dwelling Unit Covenants applicable to the affordable dwelling unit (ADU) being conveyed, as provided for by the terms of the previously recorded Declaration of Affordable Dwelling Unit Covenants applicable to the ADU and by the provisions of Part 8, Article 2 of the Fairfax County Zoning Ordinance.

This ADU Statement is referred to in the required deed provision for ADU units subject to covenants recorded before July 2, 2002, that is conveyed on or after July 2, 2002. The required deed provision is included in the Affordable Dwelling Unit Program Rider to Residential Contract of Sale that is required to be a part of the contract of sale of an applicable ADU. The deed provision to be included in the body of the deed itself.

This ADU Statement is to be attached to and incorporated into the deed conveying such an ADU on or after July 2, 2002. For example, if the deed has a separate Exhibit A legal description and no other exhibits, the ADU Statement should be identified as Exhibit B in the deed provision in the space provided in the deed provision and also labeled as Exhibit B on the ADU Statement itself.

INTRODUCTION

Among other things, the previously recorded Declaration of Affordable Dwelling Unit Covenants provides that during the Control Periods (as defined therein) the ADU shall be subject to all the provisions of Part 8, Article 2 of the Fairfax County Zoning Ordinance and the regulations established with respect thereto, as such ordinance and regulations may be amended from time to time. Effective July 2, 2002, Part 8, Article 2 of the Fairfax County Zoning Ordinance was amended including certain changes to the provisions applicable to the ADU.

This ADU Statement restates the provisions of the previously recorded Declaration of Affordable Dwelling Unit Covenants that apply to the ADU and includes the statement of applicable provisions set forth in Sections 2-812(2)(F) and 2-812(8)(B) of the Fairfax County Zoning Ordinance (Zoning Ordinance), as amended effective July 2, 2002, as provided for by Section 2-812(10) of the Zoning Ordinance, as amended effective July 2, 2002.

Section 2-812(10) of the Zoning Ordinance specifically provides that the provisions of Sections 2-812(2)(F) and 2-812(8)(B) of the Zoning Ordinance shall apply and the applicable covenants shall be deemed to incorporate such provisions, whether or not expressly set forth in such covenants, to any individual affordable dwelling unit initially conveyed on or after July 2, 2002, and the resale of any affordable dwelling unit conveyed on or after July 2, 2002, regardless of whether the covenants applicable to any such initial conveyance or resale conveyance were recorded prior to July 2, 2002.

[For use in conjunction with the required ADU deed provisions for initial sale and resale units subject to recorded ADU Covenants recorded prior to July 2, 2002, and is to be attached as Exhibit ____ to any deed recorded on or after July 2, 2002 for any such for-sale affordable dwelling unit]

STATEMENT OF AFFORDABLE DWELLING UNIT COVENANT PROVISIONS

BACKGROUND:

1. On December 11, 1989, the Board of Supervisors of Fairfax County, Virginia established an Affordable Dwelling Unit Program, as amended and modified on March 30, 1998, and as further amended and modified on July 1, 2002 ("Program"), to assist in providing affordable housing for persons with low and moderate income.
2. The Program is intended to be administered in accordance with Part 8, Article 2 of the Fairfax County Zoning Ordinance and the regulations established with respect thereto (that ordinance, together with those regulations, as the same may be amended from time to time, are collectively referred to hereinafter as the "Ordinance").
3. The Ordinance requires, in pertinent part, that owners of certain land zoned to certain zoning districts and to be developed into fifty or more residential units shall provide a number of affordable dwelling units (collectively, the "Affordable Dwellings", each individually referred to as an "Affordable Dwelling") for sale to qualified purchasers, all in accordance with and under the conditions set forth in the Ordinance.
4. The Declarant ("Declarant") under the Declaration of Affordable Dwelling Unit Covenants previously recorded with respect to the Property herein conveyed ("Declaration") has agreed that in consideration of benefits conferred upon Declarant under the Ordinance and in compliance with Declarant's obligations under the Program, the Property, together with all improvements thereon (such Property and improvements may be referred to herein as an "ADU"), shall be designated as an Affordable Dwelling in compliance with the Ordinance.
5. The Ordinance establishes certain conditions, limitations and controls on the Affordable Dwellings that are to remain in effect with regard to resale and occupancy of each of the Affordable Dwellings for a period (the "Initial Resale Control Period") beginning on the date the deed of conveyance from Declarant to the first purchaser of each of the Affordable Dwellings is recorded until fifteen (15) years thereafter; except that, for Affordable Dwellings for which the initial sale occurred prior to March 31, 1998, the Initial Resale Control Period is for a period beginning on the date the deed of conveyance from Declarant to the first purchaser of each of such Affordable Dwelling is recorded until fifty (50) years thereafter, unless the applicable Declaration has been amended, as provided for by the Ordinance, by a recorded amendment that has revised the Initial Resale Control Period to be the fifteen (15) year period described above. In addition the Ordinance establishes certain requirements applicable during the period (the "Extended Control Period") beginning upon expiration of the Initial Resale Control Period until the first resale of each of the Affordable Dwellings after expiration of the Initial Resale Control Period, which requirements establish procedures with regard to the right of the Fairfax County Redevelopment and Housing Authority ("Authority") to acquire each of the Affordable Dwellings and the payment of contributions of a portion of the proceeds from the sale of each Affordable Dwelling to the Fairfax County Housing Trust Fund. (The Initial Resale Control Period and the Extended Control Period shall be herein collectively referred to as the "Control Periods".)
6. The Ordinance further provides that with regard to each of the Affordable Dwellings, covenants shall be recorded that will run with the land in favor of the Authority for the Control Periods specifying certain terms and conditions of the Program applicable to each of the Affordable Dwellings.
7. This Statement of Affordable Dwelling Unit Covenant Provisions ("Statement of Covenant Provisions") states the Affordable Dwelling Unit Covenants applicable to the affordable dwelling unit (ADU) being conveyed, as provided for by the terms of the previously recorded Declaration of Affordable Dwelling Unit

Covenants applicable to the ADU and by the provisions of Part 8, Article 2 of the Fairfax County Zoning Ordinance.

Among other things, that Declaration provides that during the Control Periods (as defined therein) the ADU shall be subject to all the provisions of Part 8, Article 2 of the Fairfax County Zoning Ordinance and the regulations established with respect thereto, as such ordinance and regulations may be amended from time to time. Effective July 2, 2002, Part 8, Article 2 of the Fairfax County Zoning Ordinance was amended including certain changes to the provisions applicable to the ADU.

This Statement of Covenant Provisions restates and revises the provisions of the previously recorded Declaration in order to include as applicable covenant provisions those provisions set forth in Sections 2-812(2)(F) and 2-812(8)(B) of the Fairfax County Zoning Ordinance (Zoning Ordinance), as amended effective July 2, 2002, as provided for by Section 2-812(10) of the Zoning Ordinance, as amended effective July 2, 2002.

Section 2-812(10) of the Zoning Ordinance specifically provides that the provisions of Sections 2-812(2)(F) and 2-812(8)(B) of the Zoning Ordinance shall apply and the applicable covenants shall be deemed to incorporate such provisions, whether or not expressly set forth in such covenants, to any individual affordable dwelling unit initially conveyed on or after July 2, 2002, and the resale of any affordable dwelling unit conveyed on or after July 2, 2002, regardless of whether the covenants applicable to any such initial conveyance or resale conveyance were recorded prior to July 2, 2002.

8. Pursuant to the Declaration the ADU shall be subject to the covenants set forth therein and as provided for by the Zoning Ordinance as amended from time to time ("Covenants") which shall be binding in accordance with the terms therein on Declarant and all Transferees of the ADU until expiration of the applicable Control Periods. For purposes therein, Transferees shall be deemed all persons and entities that may hereafter acquire any interest whatsoever in any of the ADU, or any part thereof, from Declarant, or any successor or assign of Declarant, or any other party, whether by sale, lease, assignment, hypothecation or any other means of transfer (any and all of the foregoing means of transfer being herein referred to as a "Transfer"), for the applicable Control Periods.

ORDINANCE CONTROLS:

A. During the Initial Resale Control Period, no Transfer of the ADU, or any part thereof, shall be made at a sales price in excess of the maximum sales price permitted pursuant to Section 2-812 of the Ordinance.

B. During the Initial Resale Control Period, no Transfer of the ADU, or any part thereof, shall be made except in compliance with all other requirements of the Ordinance, including, without limitation, the obligation to offer the ADU exclusively through the Authority for sixty (60) days each time any ADU is offered for sale, and the Authority shall have waived its option to acquire the ADU or the time period with respect thereto shall have expired, before offering such ADU for resale to any other party.

C. For the initial sale of the ADU after expiration of the Initial Resale Control Period with respect thereto (the "First Applicable ADU Resale"), it shall first be offered exclusively to the Authority for sixty (60) days. To the extent the net sales price paid by the purchaser of the First Applicable ADU Resale, whether such purchaser is the Authority or another party if the Authority does not exercise its right to purchase after the Initial Resale Control Period as provided herein, exceeds the purchase price therefor paid by the immediate prior purchaser thereof, as such purchase price shall have been adjusted in accordance with the Ordinance, one-half (1/2) of such excess shall be contributed at the time of closing on the First Applicable ADU Resale to the Fairfax County Housing Trust Fund with the balance of such excess made available to the ADU seller.

D. During the Control Periods, the ADU shall be subject to all provisions of the Ordinance.

E. During the Control Periods, the Declaration and the Covenants shall be senior to all instruments securing financing with respect to an ADU, and the Declaration and these Covenants shall be binding upon all assignees, mortgagees, purchasers and other successors in interest, except that the Declaration and the Covenants shall be released in the event of foreclosure by an Eligible Lender, as such term is defined in the next sentence, as and only to the extent provided for in Section 2-812(8)(B) of the Ordinance. An Eligible Lender is defined as an institutional lender holding a first priority purchase money deed of trust on the ADU or a refinancing of such institutionally financed purchase money deed of trust by an institutional lender, provided that such refinancing does not exceed the outstanding principal balance of the existing purchase money first trust indebtedness on the ADU at the time of refinancing.

F. During the Control Periods, every Eligible Lender and every other lender secured by the ADU or other parties who have or may seek to place a lien on the ADU shall provide the County Executive and the Authority written notice of any delinquency or other event of default under the deed of trust or mortgage, or other instrument or agreement that may permit a lien to be filed against the ADU, and shall offer the Authority the right to cure such delinquency or other event of default within a period of ninety (90) days immediately after receipt by the Authority of such notice, and all financing documents with respect to the ADU shall so provide.

G. During the Control Periods, no sale, transfer or foreclosure of the ADU shall affect the validity of the Declaration and the Covenants, except as expressly set forth in the provisions of the Program as set forth in the Ordinance.

H. During the Control Periods, each Eligible Lender and any other lender secured by an interest in the ADU, prior to foreclosure upon the ADU, shall provide the County Executive and the Authority at least ninety (90) days prior written notice thereof.

I. During the Control Periods, the financing of the ADU shall comply with all of the provisions of Section 2-812(8)(B) of the Ordinance as they may be amended from time to time. In addition to the provisions stated above, during the Control Periods the ADU is subject to, and shall also comply with, the following in accordance with Section 2-812(8)(B) of the Ordinance:

1. The total aggregate amount of principal and accrued interest for all financing secured by the ADU shall not exceed the owner's purchase price (as adjusted in accordance with Section 2-812(2)(4) of the Ordinance). Any financing in excess of the owner's purchase price (as adjusted in accordance with Section 2-812(2)(4) of the Ordinance) shall not be secured by any interest in the applicable ADU.

2. An Eligible Lender shall have the right to foreclose on the ADU and the Declaration and the Covenants on the ADU shall terminate upon such foreclosure by the Eligible Lender in the event that the ADU is sold by a trustee on behalf of the Eligible Lender to a bonafide purchaser for value at a foreclosure sale and all the requirements of the Program as set forth in the Ordinance, the Declaration and the Covenants, and applicable regulations with respect to such foreclosure sale are satisfied. Such requirements include, but are not limited to, the Eligible Lender with respect to an ADU having provided the County Executive and the Authority written notice of the foreclosure sale proposed and having provided the Right to Cure and the Right to Acquire, as such terms are defined below.

3. Each Eligible Lender with respect to the ADU shall also provide a right to cure any delinquency or default subject to the foreclosure notice given to the County Executive and the Authority as provided in Section F above ("Right to Cure"), and a right to acquire an ADU subject to the foreclosure notice given to the County Executive and the Authority as provided in Section H above ("Right to Acquire"). The Right to Cure and/or the Right to Acquire, as applicable, may be exercised by the Authority, or by a nonprofit agency designated by the County Executive in the event the Authority elects not to exercise its rights, at any time during such ninety (90) day period after the Authority has received notice of the delinquency or default or of the proposed foreclosure up to and including at such foreclosure sale. The ADU so acquired shall be acquired for the purpose of resale of such ADU to persons qualified under the Program and not for conversion of the ADU to a rental unit. The Right to Acquire shall entitle the Authority or the nonprofit agency designated by the County Executive to acquire the ADU at or before any foreclosure sale for which such notice has been given upon payment in full of the outstanding indebtedness on the ADU owed to the Eligible Lender including principal, interest, and fees that together in the aggregate do not exceed the amount of the owner's purchase

price (as adjusted in accordance with Section 2-812(2)(4) of the Ordinance), and other reasonable and customary costs and expenses (the "Outstanding First Trust Debt"), and no owner, prior owner or other party, whether secured or not, shall have any rights to compensation under such circumstances.

4. In the event that neither the Authority nor the nonprofit agency designated by the County Executive exercises the Right to Acquire and the ADU is sold for an amount greater than the Outstanding First Trust Debt, one-half (1/2) of the amount in excess of the Outstanding First Trust Debt shall be paid to the Fairfax County Housing Trust Fund to promote housing affordability in Fairfax County as part of the disbursement of settlement proceeds.

5. All financing documents for financing secured by an ADU shall state that the Eligible Lender's financing provides the Right to Cure and Right to Acquire which may be exercised by the Authority, or by a nonprofit agency designated by the County Executive in the event the Authority elects not to exercise its rights, at any time during such ninety (90) day period after the Authority has received notice, as applicable, of the delinquency or default or of the proposed foreclosure up to and including at such foreclosure sale.

J. During the Extended Control Period, no Transfer of any of the ADU, or any part thereof, shall be made unless the Authority shall have been given the exclusive right to acquire the ADU in accordance with Section 2-812(5) of the Ordinance.

PRINCIPAL DOMICILE REQUIREMENTS:

Any Transferee of the ADU, except for the Authority and any nonprofit housing development agencies or corporations approved expressly in writing by the County Executive, must occupy the ADU as such Transferee's principal domicile, and must not lease or rent or permit exclusive occupancy of the ADU to any other party or parties. Each year on or within thirty (30) days prior to June 1, the owner of the ADU shall submit to the Authority, without notice or demand therefor, an affidavit executed by such owner, on form designated by the Authority, certifying such owner's continuing occupancy of the ADU.

DEED AND CONTRACT RESTRICTIONS:

During the Control Periods, at the time of the sale of the ADU the owner/applicant shall provide in the sales contract for the ADU offered for sale a copy of the recorded Declaration and the Covenants running with the land in favor of the Authority. During the Control Periods, the owner/applicant shall include in the deed for each ADU sold an express statement that the ADU is subject to the terms and conditions of the Program Declaration and the Covenants recorded pursuant to the Ordinance with a specific reference to the deed book and page where such Declaration and Covenants are recorded. During the Control Periods, at the time of any sale of the ADU, the owner/applicant shall also include in the deed for the ADU sold an express statement that the total aggregate amount of indebtedness that may be secured by the ADU is limited and that other terms and conditions apply, including, but not limited to, a right for the Authority or a nonprofit agency designated by the County Executive to acquire the ADU on certain terms in the event of a pending foreclosure sale, all as set forth in the Declaration and these Covenants and/or in the Program set forth in the Fairfax County Zoning Ordinance, as it may be amended.

ASSIGNMENT OF RIGHTS TO AUTHORITY:

Declarant, and Declarant's heirs, successors and assigns, hereby irrevocably assigns, transfers and conveys to the Authority, and any successors thereto, all right, title and interest to enforce and maintain in full force and effect, the terms, conditions, and requirements of the Covenants.

RIGHT TO ENFORCE:

If the Authority shall determine that any default has occurred under the Covenants, the Authority, or its successors, may enforce the Covenants by proceeding at law, or in equity, against the persons or entities violating or attempting to violate any of the Covenants, either to restrain any violation hereof or to recover damages, including attorneys' fees and the costs of collection, or to proceed against the applicable ADU in the enforcement of any lien or obligation created by or resulting from the Covenants as allowed under Section 2-817 of the Ordinance. No remedy conferred upon or reserved to the Authority by the Covenants is intended to be exclusive of any other available remedy or remedies, but each and every such remedy is cumulative and in addition to every other remedy given under the Covenants and the Ordinance, existing at law or equity. No delay or omission to exercise any right or power conferred under the Ordinance or the Declaration or the Covenants will impair any such right or power or will be construed to be a waiver thereof. Notwithstanding the foregoing, nothing contained in the Declaration or the Covenants or in the Ordinance, is intended to confer on the Authority a right to invalidate a Transfer made in violation of the Declaration, or otherwise to cause a forfeiture or reversion of title to the ADU. Any liens filed pursuant to the Ordinance shall not relate back in time, but shall be effective as of the date recorded.

SUCCESSORS, AMENDMENTS, SEVERABILITY, HEADINGS:

The Covenants are binding upon the ADU, upon the Declarant and the Declarant's heirs, successors and assigns, and upon all Transferees of title to the ADU for the applicable Control Periods and shall run with the land. The Covenants cannot be amended, or released, unless by written instrument executed by the Authority until expiration of the Control Periods, except with respect to a foreclosure by an Eligible Lender conducted in accordance with these Covenants and the Ordinance. If any provisions of the Covenants shall be held invalid or unenforceable, such holdings shall not invalidate or make unenforceable any other provision of the Covenants. The headings in the Declaration and the Covenants are for reference purposes only and shall not affect the meaning or interpretation of the terms and conditions thereof.